



AFR



2026:AHJ-LKO:43339-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

GOVERNMENT APPEAL No. - 434 of 1984

The State U.P.

.....Appellant(s)

Versus

Munna

.....Respondent(s)

Counsel for Appellant(s) : G.a,
Counsel for Respondent(s) :

Court No. - 11

**HON'BLE ABDUL MOIN, J.
HON'BLE PRAMOD KUMAR SRIVASTAVA, J.**

(Dictated by Hon'ble Pramod Kumar Srivastava, J.)

1. Heard Shri Pawan Kumar Mishra, learned AGA for the appellant-State.

2. The instant Government Appeal has been filed under Section 378 of the Code of Criminal Procedure, 1973 against the judgment and order dated 30.04.1983 passed by Sri R.S. Agarwal, the then learned Sessions Judge, Hardoi in Sessions Trial No. 746 of 1982, whereby the accused-respondent, Munna, was acquitted of the charges under Sections 302 and 323 of the Indian Penal Code.

3. The factual matrix of the case is that on 16.03.1982 in the evening, the stenographer of the informant, namely Munna, expressed an apprehension

cot, while the informant lay down on the floor inside the kothari, where a diya (earthen lamp) was burning.

4. At about 12:00 midnight, the accused, Munna, got up, picked up a moosal (wooden pestle), and began to assault Sri Ram with it, exclaiming that he wanted to usurp his property by killing him and would not leave him alive. When the informant, Smt. Jai Devi, raised an alarm and cried out for help, the accused also assaulted her with the moosal. Upon hearing the hue and cry, the villagers arrived at the spot. Since the kothari was locked from inside, an opening was made by breaking the western wall of the kothari. In the light of the torches and the opening made in the western wall, the villagers saw the accused assaulting Sri Ram.

5. The informant, in an attempt to save herself, peeped out from the opening made in the western wall, whereupon the villagers, namely Bhola and Mulayam, dragged her outside. At that time, villagers Pitamber, Badri, Chhote Lal, and several others were present at the spot and witnessed the incident. In this occurrence, the informant also sustained internal and external injuries. Smt. Jai Devi dictated a written report at the police station at 7:15 A.M. on 17.08.1982. On the basis of the said written report submitted by the informant, a First Information Report (FIR) was lodged against the accused, Munna, son of Raja Ram, on 17.08.1982 at 7:15 A.M. at Police Station Majhla, District Hardoi, which was located at a distance of 10 kilometers from the place of occurrence.

6. After lodging of the FIR, the police reached the place of occurrence, conducted proceedings for the inquest on the body of the deceased, sealed the corpse, and dispatched the dead body along with the

(A) External Injuries:

1. Contusion measuring 14 cm x 10 cm over the right side of the face with underlying fracture of the maxillary bone and right side of the mandible badly fractured.
2. Contusion measuring 10 cm x 8 cm over the left side of the face, with underlying fracture of the left maxillary bone badly fractured.

(B) Internal Examination:

Head & Neck: Underlying the scalp, the right parietal bone was found fractured. The membranes of the brain were deeply congested, and a lacerated hematoma measuring 4 cm x 3 cm was present under the right parietal bone. The brain was also deeply congested on the right side.

Thorax: The walls, ribs, and cartilages were normal. Both lungs were normal and congested. The heart was normal with a weight of 200 grams.

Abdomen: The buccal cavity and teeth showed 16/16 teeth present, mostly dislocated because of the mandible fracture on both sides. The stomach contained 2 ounces of paste-like food matter. The small intestine contained liquid, feces, and gas, while the large intestine contained fecal matter and gas. The liver weighed 1000 grams and was normal. The spleen weighed 100 grams and was normal. Both kidneys weighed 210 grams and were normal.

prepared recovery memos in respect of the torch, kuppi (oil lamp), blood-stained clothes, moosal (wooden pestle), blood-stained and plain earth, the banyan (undershirt), and the cot. A site plan was also prepared at the instance of the informant. The Investigating Officer recorded the statements of the witnesses under Section 161 of Cr.P.C. and, upon finding sufficient prima facie evidence against the accused, submitted a charge-sheet under Section 302 of IPC before the competent court.

10. Upon compliance with the statutory provisions, the case, being exclusively triable by a Court of Session, was committed to the Court of Session under Section 209 of the Cr.P.C. The case was registered as Sessions Trial No. 746 of 1982, and charges under Sections 302 and 323 of the IPC were formally framed against the accused, Munna. The charges were read over and explained to the accused in Hindi, to which he pleaded not guilty and claimed to be tried.

11. To prove its case, the prosecution adduced the following oral evidence:

1. Dr. R.M. Gupta (PW-1)
2. Dr. S.C. Vaish (PW-2)
3. Smt. Jai Devi (PW-3)
4. Mulayam Singh (PW-4)
5. H.C. Mahadev Singh (PW-5)
6. Pitamber (PW-6)
7. SO Ganesh Prasad Mishra (PW-8)

12. In addition to the oral evidence, the following documentary evidence was also adduced by the prosecution:

4. Exhibit Ka-4: Copy of General Diary (GD) Entry / Nakal Rapat No. 10, dated 17.08.1982.
5. Exhibit Ka-5: Copy of General Diary (GD) Entry / Nakal Rapat No. 29.
6. Exhibit Ka-6: Copy of General Diary (GD) Entry / Nakal Rapat No. 18, dated 17.08.1982.
7. Exhibit Ka-7: Copy of General Diary (GD) Entry / Nakal Rapat No. 16.
8. Exhibit Ka-8: Written Report (Tahrir) dictated by the informant, Smt. Jai Devi.
9. Exhibit Ka-9: Recovery Memo (Fard) in respect of the Torches and Earthen Lamp (Kuppi).
10. Exhibit Ka-10: Copy of the statement of Smt. Jai Devi recorded under Section 161 of the Cr.P.C..
11. Exhibit Ka-11: Inquest Report (Panchayatnama) prepared by the police.
12. Exhibit Ka-12: Police Form No. 379.
13. Exhibit Ka-13: Police Form No. 13 (Chalan Nash).
14. Exhibit Ka-14: Site Plan (Naksha Nazri Moka) prepared by the Investigating Officer.
15. Exhibit Ka-15: Recovery Memo (Fard) in respect of the blood-stained clothes (undershirt/banyan and pajama) of the accused, Munna.
16. Exhibit Ka-16: Recovery Memo (Fard) in respect of the weapon of offense, the blood-stained wooden pestle (moosal).
17. Exhibit Ka-17: Recovery Memo (Fard) in respect of the blood-stained and plain earth collected from the spot.
18. Exhibit Ka-18: Recovery Memo (Fard) in respect of the undershirt (banyan) of the deceased and the string/rope (wan) cut out from the cot.
19. Exhibit Ka-19: Charge-sheet submitted by the Investigating Officer against the accused, Munna.
13. After completion of the prosecution evidence, the statement of the

villager Pitamber. He further took a specific defense plea that on the fateful night, certain miscreants/dacoits had committed a dacoity at the house, during which incident he as well as the informant, Smt. Jai Devi, sustained injuries, and the deceased, Sri Ram, was killed by the said assailants.

14. No oral or documentary evidence has been adduced on behalf of the defense. After hearing both the parties and perusing the material available on the record, the learned trial court observed that the prosecution had suppressed the true genesis of the incident and that the witnesses were not reliable. The learned trial court heavily relied on the fact that the informant had completely discarded the prosecution version and resiled from her statement in court. It further held that no reliable evidence was available on record, noting the absence of a proven motive, material inconsistencies in the statements of the witnesses, and the inimical disposition of the village witnesses. The trial court also drew an adverse inference on the ground that the injuries sustained by the accused were not explained by the prosecution, and concluded that the entire substratum of the prosecution story was demolished by the testimony of the informant herself. Consequently, the learned trial court concluded that the prosecution had miserably failed to prove the charges levelled against the accused beyond reasonable doubt and resultantly acquitted the accused of the charges under Sections 302 and 323 of the IPC.

15. Being aggrieved by the impugned judgment of acquittal, the State has preferred the instant appeal inter alia on the grounds that the learned trial court grossly erred in rejecting the testimony of the informant in its entirety. It is contended that the informant had fully supported the prosecution case in its material aspects during the initial stage and her

testimony was discarded on the legally untenable ground that they were unreliable.

16. Furthermore, the appellant urges that the learned trial court completely ignored a highly incriminating circumstance that the Investigating Officer, Ganesh Prasad Mishra (PW-8), found the accused, Munna, inside the kothari where the deceased was lying dead on the cot. The accused had locked himself inside and bargained with the villagers, stating that he would only come out if his dispute was settled. It was only upon the categorical assurance given by the Investigating Officer that he would not be beaten that the accused opened the door of the kothari and was taken into custody. It is submitted that the learned trial court failed to appreciate these binding circumstances, which directly point toward the guilt of the accused and passed the impugned judgment of acquittal in a mechanical and arbitrary manner. The appellant maintains that the prosecution has conclusively proved its case by adducing relevant, material, and reliable oral as well as documentary evidence and therefore the impugned judgment of acquittal is liable to be set aside, the appeal deserves to be allowed, and the accused-respondent is liable to be convicted and sentenced in accordance with law.

17. Heard learned counsel for the parties and perused the record. At the very outset, it is expedient to outline the settled legal principles governing the power of an appellate court to interfere with and reverse a judgment of acquittal. The law regarding the scope of an appeal against acquittal under Section 378 of the Cr.P.C. has been consistently highlighted and consolidated by the Hon'ble Apex Court a catena of cases. In the case of Union of India and Others Vs. Sepoy Pravat Kumar Behuria; (2019) 10 SCC 220, in para 17 the Court observed as follows:-

- (i) The trial court's conclusion with regard to the facts is palpably wrong;*
 - (ii) The trial court's decision was based on an erroneous view of law;*
 - (iii) The trial court's judgment is likely to result in "grave miscarriage of justice";*
 - (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
 - (v) The trial court's judgment was manifestly unjust and unreasonable;*
 - (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*
 - (vii) This list is intended to be illustrative, not exhaustive.*
- 2. The appellate court must always give proper weight and consideration to the findings of the trial court.*
 - 3. If two reasonable views can be reached — one that leads to acquittal, the other to conviction — the High Courts/appellate courts must rule in favour of the accused."*

18. In Mathai Mathews Vs. State of Maharashtra; (1970) 3 SCC 772, in para 5 the Court observed as under:-

5. It is now well-settled that the power of an appellate court to review evidence in appeals against acquittals is as extensive as its power in appeals against convictions. It is also well-settled that before an appellate court can set aside an order of acquittal, it must carefully consider the reasons given by the trial court in support of its order and must give its own reasons to reject those reasons. If a finding reached by the 'trial Judge cannot be said to be a unreasonable finding then the appellate court should not disturb that finding even if it is possible to reach a different conclusion on the basis of the material on record. It should bear in mind the presumption of innocence of the accused and the fact that the Trial Judge had the advantage of seeing and hearing the witnesses. In brief, the appellate court should not disturb an order of acquittal except on very cogent grounds. On an examination of the entire material on record we have come to the conclusion that the High Court was not justified in setting aside the order of the trial court."

18. In view of the above settled position of law, it is to be seen whether the learned trial court has recorded its findings on the basis of

children; however, none of the children of the deceased has been examined by the prosecution.

19. As per the First Information Report, exhibited as Exhibit Ka-3, the informant, the deceased, and the accused were all present inside the kothari where the incident took place. According to the FIR, the accused first launched an assault with a moosal on the deceased, Sri Ram, who was on a cot, repeatedly striking him. When the informant raised an alarm, the accused beat her as well.

18. However, during the trial, the informant, Smt. Jai Devi, who was examined as PW-3, did not support the prosecution version. She stated that after her marriage, she resided mostly at Kanpur, where her husband, Raja Ram, was employed. She further deposed that on the date of the incident, she had come to the village. According to her trial testimony, while they were sleeping at night, the deceased, Sri Ram, raised an alarm, shouting “हाय बदमाश आ गये मारे डालते हैं”. She claimed that upon hearing this alarm, the accused, Munna, and she herself came out of the kothari and saw miscreants assaulting the deceased. When she rushed to save him, the miscreants beat her as well, causing her injuries. Thereafter several villagers arrived and the miscreants fled the spot.

19. She categorically stated before the Court that she neither dictated the written report to Pitamber nor went to the police station to lodge the FIR. She asserted that when the police arrived at the spot in the morning, they obtained her thumb impression on a blank piece of paper, which corresponds to Paper No. 3/2-Ka. Upon perusing the said document in Court, she emphasized that she had not lodged the report. Due to her complete refusal to support the prosecution version, the witness was declared hostile.

entered the courtyard and brutally beat the deceased with lathis and dandas. She further stated that the miscreants also inflicted blows upon her and the accused, Munna, and since there was total darkness, it was possible that the miscreants might have assaulted her with a moosal. She further alleged that the miscreants committed a loot, taking away her jewellery from a box inside the house.

21. Significantly, this witness also deposed about an ongoing dispute over an orchard. She stated that the uncle of the witness Pitamber had been assassinated in the past and that the deceased Sri Ram had deposed in a case. She asserted that there was an orchard in the field where the accused, Munna, had made an encroachment, leading to bitter enmity between Munna and Pitamber. She claimed that due to this pre-existing enmity, Pitamber had falsely implicated the accused, Munna, in the present case.

22. Thus, the star witness of the prosecution completely resiled from the prosecution version, shifting the entire manner of occurrence and exonerating the accused from his alleged role. Although it is an undisputed fact on record that the deceased met a homicidal death caused by blows from a hard and blunt object, the fundamental question that arises is who actually assaulted the deceased. While the prosecution version initially averred in the FIR that the accused, Munna, was the sole culprit who brutally assaulted and killed the deceased. The informant turned completely hostile before the Court. It is noteworthy that Smt. Jai Devi is the stepmother of the accused. Since she herself sustained substantial injuries during the same incident, it strains credulity to assume why an injured victim would easily spare her own assailant to falsely shield her stepson unless the genesis of the crime itself was clouded by reasonable doubt.

account, the absence or weakness of motive becomes insignificant, yet it can never be ignored that motive plays an important role in the commission of a crime, especially when the ocular testimony is shaky or compromised. In the present case, a credible and clear motive linking the accused to the commission of the offense is visibly lacking, which further weakens the prosecution's case.

24. In this regard the Hon'ble Apex Court, in the case of **Vaibhav Vs. State of Maharashtra; (2025) 8 SCC 315**, has held as under:-

33. We may now come to the next aspect of the case i.e. absence of motive and consequence thereof. It is trite law that in a case based on circumstantial evidence, motive is relevant. However, it is not conclusive of the matter. There is no rule of law that the absence of motive would ipso facto dismember the chain of evidence and would lead to automatic acquittal of the accused. It is so because the weight of other evidence needs to be seen and if the remaining evidence is sufficient to prove guilt, motive may not hold relevance. But a complete absence of motive is certainly a circumstance which may weigh in favour of the accused. During appreciation of evidence wherein favourable and unfavourable circumstances are sifted and weighed against each other, this circumstance ought to be incorporated as one leaning in favour of the accused.

25. It has been vehemently emphasized by the learned counsel for the appellant that since the prosecution has produced two other witnesses of facts who are also eye-witnesses to the incident, the turnabout or resiling of the informant from her statement will have no adverse effect on the prosecution case, provided the charges are established beyond reasonable doubt by such other evidence. In order to test this submission, we proceed to scrutinize the testimony of the remaining two witnesses of facts.

26. At this juncture, it is a well-settled principle of criminal jurisprudence that judicial evaluation of ocular evidence broadly categorizes witnesses into three distinct types: (i) wholly reliable, for

27. To prove its case, the prosecution has adduced Mulayam as PW-4. This witness stated in his examination-in-chief that at the time of the incident, he was sleeping on the roof of his house when he heard a noise coming from Munna's house. He rushed toward the spot, where other villagers, namely Bhola, Chhote Lal, Badri, and Pitamber also met him. He claimed that from inside the kothari, the screaming of Smt. Jai Devi was audible, who was crying out “हाय मुन्ना मारे डाल रहा है”. He further stated that they all broke the western wall of the kothari to open a passage, through which they saw, with the help of a torch, that the accused, Munna was holding a moosal in his hand. They then pulled Smt. Jai Devi outside through the said passage but Munna remained locked inside the kothari. He also deposed that Smt. Jai Devi told him that Munna had beaten her as well and thereafter she dictated the written report (tahrir) to Pitamber.

28. However, a close perusal of the cross-examination of this witness completely shakes the credibility of his ocular account. During his cross-examination on behalf of the accused, PW-4 stated that at the time of the incident, there was a great hue and cry and about 20 to 25 people had gathered at the spot. He reiterated that screaming was coming from inside the kothari and that Munna was holding a moosal.

29. Crucially, however, he admitted in his cross-examination that he did not state to the Investigating Officer in his statement recorded under Section 161 of the Cr.P.C. that he had actually seen Munna inflicting blows with the moosal upon his uncle, Sri Ram, or that the accused assaulted the informant when she rushed to save the deceased.

30. Thus, from a holistic evaluation of the testimony of PW-4, it clearly emerges that he merely reached the spot after hearing the hue and

31. On the contrary, the informant, Smt. Jai Devi (PW-3) has explicitly denied these facts in her testimony, categorically asserting that 15 to 16 outside miscreants entered their courtyard, committed a loot, and inflicted blows upon the deceased, the accused, and herself, whereby they all sustained injuries. She has completely disowned the written report, stating that the tahrir was never written on her dictation and that the police merely obtained her thumb impression on a blank piece of paper on the next morning.

32. Consequently, the testimony of PW-4 cannot be termed as cogent, consistent, or believable. His derivative knowledge regarding the assault allegedly made by the accused stands completely contradicted and demolished by the very person—the informant—from whom he claims to have gathered such knowledge. Therefore, the testimony of PW-4 falls into the category of unreliable evidence and fails to provide the requisite independent corroboration to the prosecution case.

33. The other witness of fact produced by the prosecution is Pitamber, who was examined as PW-6, who also stated that upon raising of the alarm by the informant, Smt. Jai Devi, from inside the kothari, he rushed toward the house of Munna where Bhola, Chhote Lal, and Badri met him. Mulayam was having a torch. Jai Devi was screaming to save her and that someone was killing them. Then the western wall of the kothari was broken and after making an opening, they saw that Munna was having a moosal and was beating Jai Devi. Then they scolded the accused, Munna, and he left the moosal. Thereafter, they pulled Jai Devi out from the passage of the opening. He also stated that Jai Devi had dictated the report to him regarding the incident, and after being heard, she had put her thumb impression. On being cross-examined by the counsel of defence, he also stated that he did not tell the Investigating

the date of the incident and he also denied that during the commission of a dacoity, the deceased was assaulted. He admitted that the murder of his uncle was conducted but he does not know whether in that trial the deceased, Sri Ram, was a witness or not. He denied that Munna had encroached on his field. He stated that the report was lodged at about 2:30 in the night, but he did not depose that in the night information was sought from the police station and police personnel arrived there.

34. From this evidence also, it reveals that he did not see through his naked eye that the accused, Munna was inflicting blows to the deceased. He only said Munna was having a moosal in his hand and Jai Devi has specifically denied this fact. Thus, the testimony of this witness, who is examined as an eye-witness, is not sufficient to prove the charge levelled against the accused, as his deposition has been contradicted by the informant and she had stated that she never dictated to Pitamber for the lodging of the FIR and the averments made in the FIR were prepared later on after taking her thumb impression on a blank paper. Moreover, the evidence of PW-6 as well as PW-4 may be circumstantial evidence that after a hue and cry they reached the spot and saw the deceased and Jai Devi, but from their evidence, it does not reveal that they witnessed the core execution of the incident.

35. Here it is to be notable that witnesses should be of sterling quality, as the Hon'ble Apex Court held in the case of **Rai Sandeep Vs. State (NCT of Delhi), (2012) 8 SCC 21**. The relevant paragraph of the said judgment is extracted herein-below:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the

and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

36. In view of the law cited by the Hon'ble Apex Court regarding the sterling quality of a witness, when we examine the depositions made by PW-4 Mulayam and PW-6 Pitamber, we find that the quality of the testimonies of these witnesses is not of sterling quality. Their testimonies are mostly based on the statement of the informant, who is said to have narrated the story, while she herself has completely denied this statement in court.

37. Now the question arises as to why these witnesses of fact gave evidence against the accused. The accused has stated in his statement recorded under Section 313 of Cr.P.C. that the witnesses were inimical to him, since Pitamber always quarreled with him regarding the field of Lewa, and because the accused was in possession of the Lewa field, he was falsely implicated due to this enmity. It is a settled principle that enmity is a double-edged weapon that can cut both ways. One aspect is

prosecution's star witness (the informant) stated in her deposition that Pitamber was inimical to the accused, Munna, because Munna had forcibly made an encroachment on the field of Pitamber. Thus, the possibility that the accused may have been falsely implicated due to pre-existing enmity cannot be ruled out.

38. It is also pertinent to observe that no report from the Forensic Science Laboratory (FSL) with regard to the blood-stained clothes and objects found on the spot has been produced before the court. There is not even an FSL report for the blood-stained earth and simple earth which had been collected during the course of the investigation from the alleged place of occurrence. No plausible explanation has been offered by the prosecution as to why this material evidence was prevented from being presented before the court, which also warrants an adverse inference against the prosecution case.

39. There is also a glaring fact that none of the sons of the deceased was examined by the prosecution. It appears from the record that a son of Sri Ram, as well as Bhola and the brother of the accused were residing in that very house on the date of the incident. Yet, the prosecution has failed to offer any plausible explanation for not examining any of them. They would have been the most natural witnesses because if an alarm was raised from inside the kothari, the persons who were inside the house and living adjacent to the kothari would naturally be the first to witness the occurrence. By failing to examine them, this material witness evidence was suppressed and not disclosed to the court and these circumstances weigh heavily against the prosecution for withholding the true facts.

40. Apart from this, another highly important fact is that the

offered by the prosecution. In this regard, PW-5 also admitted that the accused had an injury on his person when he came to the police station. The Investigating Officer has also stated that the accused was not beaten after his arrest. This clearly establishes that if the injuries were not inflicted by the police personnel after his arrest, they must have occurred at the time the incident took place. Therefore, the probability of the statement given by the informant that 15 to 16 outside miscreants entered the courtyard, committed a loot, and took away her jewellery, cannot be ruled out.

41. It is also very surprising that as per the prosecution evidence, the deceased, Sri Ram, had arranged the marriage of the daughter of his brother-in-law to the accused prior to the incident. This fact clearly demonstrates that if there was indeed any deeply entrenched animosity or murderous friction between them, it would have been highly improbable for them to enter into such a close familial alliance and get their kith and kin married.

42. On a holistic and critical analysis of the facts, circumstances, and the evidence adduced by the prosecution in its entirety, it is manifest that the prosecution case suffers from deeply entrenched infirmities and major discrepancies. The very genesis of the prosecution case has been suppressed and the informant, who was the most natural and injured witness of the incident, completely discarded the prosecution version. By turning hostile, she explicitly refused to support the case in respect of the core allegation that the accused-respondent had assaulted the deceased and herself. The testimonies of other two witnesses of facts, namely PW-4 and PW-6, do not possess the attributes of sterling quality and are legally insufficient to sustain a conviction. Furthermore, a clear and credible motive is completely lacking on record.

itself are doubtful, conviction cannot be sustained. The Court held as under:—

"25. It is a well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. Inasmuch as the prosecution has failed to establish the circumstances in which the appellant was alleged to have fired at the deceased, the entire story deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home the guilt of the appellant. In such circumstances, the appellant is entitled to the benefit of doubt."

44. The Hon'ble Supreme Court in the said case also referred the case of **Bhagwan Sahai v. State of Rajasthan**, holding that once the prosecution is found to have suppressed the origin and genesis of the occurrence, the only proper course is to grant the accused the benefit of doubt. The Court observed as follows:—

"8. The aforesaid view of the High Court is devoid of legal merits. Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants. The appellants can legitimately claim right to use force once they saw their parents being assaulted and when actually it has been shown that due to such assault and injury their father subsequently died. In the given facts, adverse inference must be drawn against the prosecution for not offering any explanation much less a plausible one. Drawing of such adverse inference is given a go-by in the case of free fight mainly because the occurrence in that case may take place at different spots and in such a manner that a witness may not reasonably be expected to see and therefore explain the injuries sustained by the defence party. This is not the factual situation in the present case."

45. Therefore, on the basis of the facts and circumstances emerging from the records available, the learned trial court reasonably and

a meticulous appreciation of the material available on the record. The view taken by the trial court is a highly plausible and reasonable view, which is in perfect consonance with the settled principles of law, warranting no interference by this Court.

46. In view of the above discussions, the instant Government Appeal preferred by the State lacks merit and is, accordingly, **dismissed**.

47. The impugned judgment and order of acquittal dated 30.04.1983 passed by the learned Sessions Judge, Hardoi in Sessions Trial No. 746 of 1982 is hereby upheld.

48. Let a copy of this judgment along with the lower court record be sent down to the trial court concerned forthwith for necessary information and compliance.

(Pramod Kumar Srivastava,J.) (Abdul Moin,J.)

July 01, 2026

Haseenuddin